

108TH CONGRESS
1ST SESSION

S. 222

AN ACT

To approve the settlement of the water rights claims of the Zuni Indian Tribe in Apache County, Arizona, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Zuni Indian Tribe
5 Water Rights Settlement Act of 2003”.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—Congress makes the following find-
3 ings:

4 (1) It is the policy of the United States, in
5 keeping with its trust responsibility to Indian tribes,
6 to promote Indian self-determination, religious free-
7 dom, political and cultural integrity, and economic
8 self-sufficiency, and to settle, wherever possible, the
9 water rights claims of Indian tribes without lengthy
10 and costly litigation.

11 (2) Quantification of rights to water and devel-
12 opment of facilities needed to use tribal water sup-
13 plies effectively is essential to the development of
14 viable Indian reservation communities, particularly
15 in arid western States.

16 (3) On August 28, 1984, and by actions subse-
17 quent thereto, the United States established a res-
18 ervation for the Zuni Indian Tribe in Apache Coun-
19 ty, Arizona upstream from the confluence of the Lit-
20 tle Colorado and Zuni Rivers for long-standing reli-
21 gious and sustenance activities.

22 (4) The water rights of all water users in the
23 Little Colorado River basin in Arizona have been in
24 litigation since 1979, in the Superior Court of the
25 State of Arizona in and for the County of Apache
26 in Civil No. 6417, In re The General Adjudication

1 of All Rights to Use Water in the Little Colorado
2 River System and Source.

3 (5) Recognizing that the final resolution of the
4 Zuni Indian Tribe's water claims through litigation
5 will take many years and entail great expense to all
6 parties, continue to limit the Tribe's access to water
7 with economic, social, and cultural consequences to
8 the Tribe, prolong uncertainty as to the availability
9 of water supplies, and seriously impair the long-term
10 economic planning and development of all parties,
11 the Tribe and neighboring non-Indians have sought
12 to settle their disputes to water and reduce the bur-
13 dens of litigation.

14 (6) After more than 4 years of negotiations,
15 which included participation by representatives of
16 the United States, the Zuni Indian Tribe, the State
17 of Arizona, and neighboring non-Indian communities
18 in the Little Colorado River basin, the parties have
19 entered into a Settlement Agreement to resolve all of
20 the Zuni Indian Tribe's water rights claims and to
21 assist the Tribe in acquiring surface water rights, to
22 provide for the Tribe's use of groundwater, and to
23 provide for the wetland restoration of the Tribe's
24 lands in Arizona.

1 (7) To facilitate the wetland restoration project
2 contemplated under the Settlement Agreement, the
3 Zuni Indian Tribe acquired certain lands along the
4 Little Colorado River near or adjacent to its Res-
5 ervation that are important for the success of the
6 project and will likely acquire a small amount of
7 similarly situated additional lands. The parties have
8 agreed not to object to the United States taking title
9 to certain of these lands into trust status; other
10 lands shall remain in tribal fee status. The parties
11 have worked extensively to resolve various govern-
12 mental concerns regarding use of and control over
13 those lands, and to provide a successful model for
14 these types of situations, the State, local, and tribal
15 governments intend to enter into an Intergovern-
16 mental Agreement that addresses the parties' gov-
17 ernmental concerns.

18 (8) Pursuant to the Settlement Agreement, the
19 neighboring non-Indian entities will assist in the
20 Tribe's acquisition of surface water rights and devel-
21 opment of groundwater, store surface water supplies
22 for the Zuni Indian Tribe, and make substantial ad-
23 ditional contributions to carry out the Settlement
24 Agreement's provisions.

1 (9) To advance the goals of Federal Indian pol-
 2 icy and consistent with the trust responsibility of the
 3 United States to the Tribe, it is appropriate that the
 4 United States participate in the implementation of
 5 the Settlement Agreement and contribute funds for
 6 the rehabilitation of religious riparian areas and
 7 other purposes to enable the Tribe to use its water
 8 entitlement in developing its Reservation.

9 (b) PURPOSES.—The purposes of this Act are—

10 (1) to approve, ratify, and confirm the Settle-
 11 ment Agreement entered into by the Tribe and
 12 neighboring non-Indians;

13 (2) to authorize and direct the Secretary of the
 14 Interior to execute and perform the Settlement
 15 Agreement and related waivers;

16 (3) to authorize and direct the United States to
 17 take legal title and hold such title to certain lands
 18 in trust for the benefit of the Zuni Indian Tribe; and

19 (4) to authorize the actions, agreements, and
 20 appropriations as provided for in the Settlement
 21 Agreement and this Act.

22 **SEC. 3. DEFINITIONS.**

23 In this Act:

24 (1) EASTERN LCR BASIN.—The term “Eastern
 25 LCR basin” means the portion of the Little Colo-

1 rado River basin in Arizona upstream of the con-
 2 fluence of Silver Creek and the Little Colorado
 3 River, as identified on Exhibit 2.10 of the Settle-
 4 ment Agreement.

5 (2) FUND.—The term “Fund” means the Zuni
 6 Indian Tribe Water Rights Development Fund es-
 7 tablished by section 6(a).

8 (3) INTERGOVERNMENTAL AGREEMENT.—The
 9 term “Intergovernmental Agreement” means the
 10 intergovernmental agreement between the Zuni In-
 11 dian Tribe, Apache County, Arizona and the State
 12 of Arizona described in article 6 of the Settlement
 13 Agreement.

14 (4) PUMPING PROTECTION AGREEMENT.—The
 15 term “Pumping Protection Agreement” means an
 16 agreement, described in article 5 of the Settlement
 17 Agreement, between the Zuni Tribe, the United
 18 States on behalf of the Tribe, and a local landowner
 19 under which the landowner agrees to limit pumping
 20 of groundwater on his lands in exchange for a waiv-
 21 er of certain claims by the Zuni Tribe and the
 22 United States on behalf of the Tribe.

23 (5) RESERVATION; ZUNI HEAVEN RESERVA-
 24 TION.—The term “Reservation” or “Zuni Heaven
 25 Reservation”, also referred to as “Kolhu:wala:wa”,

1 means the following property in Apache County, Ari-
 2 zona: Sections 26, 27, 28, 33, 34, and 35, Township
 3 15 North, Range 26 East, Gila and Salt River Base
 4 and Meridian; and Sections 2, 3, 4, 9, 10, 11, 13,
 5 14, 15, 16, 23, 26, and 27, Township 14 North,
 6 Range 26 East, Gila and Salt River Base and Me-
 7 ridian.

8 (6) SECRETARY.—The term “Secretary” means
 9 the Secretary of the Interior.

10 (7) SETTLEMENT AGREEMENT.—The term
 11 “Settlement Agreement” means that agreement
 12 dated June 7, 2002, together with all exhibits there-
 13 to. The parties to the Settlement Agreement include
 14 the Zuni Indian Tribe and its members, the United
 15 States on behalf of the Tribe and its members, the
 16 State of Arizona, the Arizona Game and Fish Com-
 17 mission, the Arizona State Land Department, the
 18 Arizona State Parks Board, the St. Johns Irrigation
 19 and Ditch Co., the Lyman Water Co., the Round
 20 Valley Water Users’ Association, the Salt River
 21 Project Agricultural Improvement and Power Dis-
 22 trict, the Tucson Electric Power Company, the City
 23 of St. Johns, the Town of Eagar, and the Town of
 24 Springerville.

1 (8) SRP.—The term “SRP” means the Salt
 2 River Project Agricultural Improvement and Power
 3 District, a political subdivision of the State of Ari-
 4 zona.

5 (9) TEP.—The term “TEP” means Tucson
 6 Electric Power Company.

7 (10) TRIBE, ZUNI TRIBE, OR ZUNI INDIAN
 8 TRIBE.—The terms “Tribe”, “Zuni Tribe”, or “Zuni
 9 Indian Tribe” means the body politic and federally
 10 recognized Indian nation, and its members.

11 (11) ZUNI LANDS.—The term “Zuni Lands”
 12 means all the following lands, in the State of Ari-
 13 zona, that, on the effective date described in section
 14 9(a), are—

15 (A) within the Zuni Heaven Reservation;

16 (B) held in trust by the United States for
 17 the benefit of the Tribe or its members; or

18 (C) held in fee within the Little Colorado
 19 River basin by or for the Tribe.

20 **SEC. 4. AUTHORIZATION, RATIFICATIONS, AND CONFIRMA-**
 21 **TIONS.**

22 (a) SETTLEMENT AGREEMENT.—To the extent the
 23 Settlement Agreement does not conflict with the provi-
 24 sions of this Act, such Settlement Agreement is hereby
 25 approved, ratified, confirmed, and declared to be valid.

1 The Secretary is authorized and directed to execute the
2 Settlement Agreement and any amendments approved by
3 the parties necessary to make the Settlement Agreement
4 consistent with this Act. The Secretary is further author-
5 ized to perform any actions required by the Settlement
6 Agreement and any amendments to the Settlement Agree-
7 ment that may be mutually agreed upon by the parties
8 to the Settlement Agreement.

9 (b) AUTHORIZATION OF APPROPRIATIONS.—There is
10 authorized to be appropriated to the Zuni Indian Tribe
11 Water Rights Development Fund established in section
12 6(a), \$19,250,000, to be allocated by the Secretary as fol-
13 lows:

14 (1) \$3,500,000 for fiscal year 2004, to be used
15 for the acquisition of water rights and associated
16 lands, and other activities carried out, by the Zuni
17 Tribe to facilitate the enforceability of the Settle-
18 ment Agreement, including the acquisition of at
19 least 2,350 acre-feet per year of water rights before
20 the deadline described in section 9(b).

21 (2) \$15,750,000, of which \$5,250,000 shall be
22 made available for each of fiscal years 2004, 2005,
23 and 2006, to take actions necessary to restore, reha-
24 bilitate, and maintain the Zuni Heaven Reservation,
25 including the Sacred Lake, wetlands, and riparian

1 areas as provided for in the Settlement Agreement
 2 and under this Act.

3 (c) OTHER AGREEMENTS.—Except as provided in
 4 section 9, the following 3 separate agreements, together
 5 with all amendments thereto, are approved, ratified, con-
 6 firmed, and declared to be valid:

7 (1) The agreement between SRP, the Zuni
 8 Tribe, and the United States on behalf of the Tribe,
 9 dated June 7, 2002.

10 (2) The agreement between TEP, the Zuni
 11 Tribe, and the United States on behalf of the Tribe,
 12 dated June 7, 2002.

13 (3) The agreement between the Arizona State
 14 Land Department, the Zuni Tribe, and the United
 15 States on behalf of the Tribe, dated June 7, 2002.

16 **SEC. 5. TRUST LANDS.**

17 (a) NEW TRUST LANDS.—Upon satisfaction of the
 18 conditions in paragraph 6.2 of the Settlement Agreement,
 19 and after the requirements of section 9(a) have been met,
 20 the Secretary shall take the legal title of the following
 21 lands into trust for the benefit of the Zuni Tribe:

22 (1) In T. 14 N., R. 27 E., Gila and Salt River
 23 Base and Meridian:

24 (A) Section 13: SW 1/4, S 1/2 NE 1/4 SE
 25 1/4, W 1/2 SE 1/4, SE 1/4 SE 1/4;

1 (B) Section 23: N $\frac{1}{2}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, N
 2 $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ SE
 3 $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$;

4 (C) Section 24: NW $\frac{1}{4}$, SW $\frac{1}{4}$, S $\frac{1}{2}$
 5 NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$; and

6 (D) Section 25: N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE
 7 $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$.

8 (2) In T. 14 N., R. 28 E., Gila and Salt River
 9 Base and Meridian:

10 (A) Section 19: W $\frac{1}{2}$ E $\frac{1}{2}$ NW $\frac{1}{4}$, W
 11 $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$
 12 SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$;

13 (B) Section 29: SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$,
 14 NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$
 15 $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, SW
 16 $\frac{1}{4}$ SE $\frac{1}{4}$;

17 (C) Section 30: W $\frac{1}{2}$, SE $\frac{1}{4}$; and

18 (D) Section 31: N $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ S $\frac{1}{2}$
 19 $\frac{1}{2}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$, E
 20 $\frac{1}{2}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$
 21 NW $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, SW
 22 $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$.

23 (b) FUTURE TRUST LANDS.—Upon satisfaction of
 24 the conditions in paragraph 6.2 of the Settlement Agree-
 25 ment, after the requirements of section 9(a) have been

1 met, and upon acquisition by the Zuni Tribe, the Sec-
 2 retary shall take the legal title of the following lands into
 3 trust for the benefit of the Zuni Tribe:

4 (1) In T. 14 N., R. 26E., Gila and Salt River
 5 Base and Meridian: Section 25: N 1/2 NE 1/4, N
 6 1/2 S 1/2 NE 1/4, NW 1/4, N 1/2 NE 1/4 SW 1/
 7 4, NE 1/4 NW 1/4 SW 1/4.

8 (2) In T. 14 N., R. 27 E., Gila and Salt River
 9 Base and Meridian:

10 (A) Section 14: SE 1/4 SW 1/4, SE 1/4;

11 (B) Section 16: S 1/2 SW 1/4 SE 1/4;

12 (C) Section 19: S 1/2 SE 1/4 SE 1/4;

13 (D) Section 20: S 1/2 SW 1/4 SW 1/4, E
 14 1/2 SE 1/4 SE 1/4;

15 (E) Section 21: N 1/2 NE 1/4, E 1/2 NE
 16 1/4 NW 1/4, SE 1/4 NW 1/4, W 1/2 SW 1/4
 17 NE 1/4, N 1/2 NE 1/4 SW 1/4, SW 1/4 NE
 18 1/4 SW 1/4, E 1/2 NW 1/4 SW 1/4, SW 1/4
 19 NW 1/4 SW 1/4, W 1/2 SW 1/4 SW 1/4;

20 (F) Section 22: SW 1/4 NE 1/4 NE 1/4,
 21 NW 1/4 NE 1/4, S 1/2 NE 1/4, N 1/2 NW 1/
 22 4, SE 1/4 NW1/4, N 1/2 SW 1/4 NW 1/4, SE
 23 1/4 SW 1/4 NW 1/4, N 1/2 N 1/2 SE 1/4, N
 24 1/2 NE 1/4 SW 1/4;

1 (G) Section 24: N $\frac{1}{2}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SE
 2 $\frac{1}{4}$;

3 (H) Section 29: N $\frac{1}{2}$ N $\frac{1}{2}$;

4 (I) Section 30: N $\frac{1}{2}$ N $\frac{1}{2}$, N $\frac{1}{2}$ S $\frac{1}{2}$
 5 2 NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$; and

6 (J) Section 36: SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$,
 7 NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$.

8 (3) In T. 14 N., R. 28 E., Gila and Salt River
 9 Base and Meridian:

10 (A) Section 18: S $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW
 11 $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$
 12 SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, N $\frac{1}{2}$
 13 SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$;

14 (B) Section 30: S $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NW
 15 $\frac{1}{4}$ NE $\frac{1}{4}$; and

16 (C) Section 32: N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$,
 17 SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$
 18 4, SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, N
 19 $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$.

20 (c) NEW RESERVATION LANDS.—Upon satisfaction
 21 of the conditions in paragraph 6.2 of the Settlement
 22 Agreement, after the requirements of section 9(a) have
 23 been met, and upon acquisition by the Zuni Tribe, the Sec-
 24 retary shall take the legal title of the following lands in
 25 Arizona into trust for the benefit of the Zuni Tribe and

1 make such lands part of the Zuni Indian Tribe Reserva-
 2 tion in Arizona: Section 34, T. 14 N., R. 26 E., Gila and
 3 Salt River Base and Meridian.

4 (d) LIMITATION ON SECRETARIAL DISCRETION.—
 5 The Secretary shall have no discretion regarding the ac-
 6 quisitions described in subsections (a), (b), and (c).

7 (e) LANDS REMAINING IN FEE STATUS.—The Zuni
 8 Tribe may seek to have the legal title to additional lands
 9 in Arizona, other than the lands described in subsection
 10 (a), (b), or (c), taken into trust by the United States for
 11 the benefit of the Zuni Indian Tribe pursuant only to an
 12 Act of Congress enacted after the date of enactment of
 13 this Act specifically authorizing the transfer for the ben-
 14 efit of the Zuni Tribe.

15 (f) FINAL AGENCY ACTION.—Any written certifi-
 16 cation by the Secretary under subparagraph 6.2.B of the
 17 Settlement Agreement constitutes final agency action
 18 under the Administrative Procedure Act and is reviewable
 19 as provided for under chapter 7 of title 5, United States
 20 Code.

21 (g) NO FEDERAL WATER RIGHTS.—Lands taken
 22 into trust pursuant to subsection (a), (b), or (c) shall not
 23 have Federal reserved rights to surface water or ground-
 24 water.

1 (h) STATE WATER RIGHTS.—The water rights and
 2 uses for the lands taken into trust pursuant to subsection
 3 (a) or (c) must be determined under subparagraph 4.1.A
 4 and article 5 of the Settlement Agreement. With respect
 5 to the lands taken into trust pursuant to subsection (b),
 6 the Zuni Tribe retains any rights or claims to water asso-
 7 ciated with these lands under State law, subject to the
 8 terms of the Settlement Agreement.

9 (i) FORFEITURE AND ABANDONMENT.—Water rights
 10 that are appurtenant to lands taken into trust pursuant
 11 to subsection (a), (b), or (c) shall not be subject to for-
 12 feiture and abandonment.

13 (j) AD VALOREM TAXES.—With respect to lands that
 14 are taken into trust pursuant to subsection (a) or (b), the
 15 Zuni Tribe shall make payments in lieu of all current and
 16 future State, county, and local ad valorem property taxes
 17 that would otherwise be applicable to those lands if they
 18 were not in trust.

19 (k) AUTHORITY OF TRIBE.—For purposes of com-
 20 plying with this section and article 6 of the Settlement
 21 Agreement, the Tribe is authorized to enter into—

22 (1) the Intergovernmental Agreement between
 23 the Zuni Tribe, Apache County, Arizona, and the
 24 State of Arizona; and

1 (2) any intergovernmental agreement required
 2 to be entered into by the Tribe under the terms of
 3 the Intergovernmental Agreement.

4 (1) FEDERAL ACKNOWLEDGEMENT OF INTERGOV-
 5 ERNMENTAL AGREEMENTS.—

6 (1) IN GENERAL.—The Secretary shall acknowl-
 7 edge the terms of any intergovernmental agreement
 8 entered into by the Tribe under this section.

9 (2) NO ABROGATION.—The Secretary shall not
 10 seek to abrogate, in any administrative or judicial
 11 action, the terms of any intergovernmental agree-
 12 ment that are consistent with subparagraph 6.2.A of
 13 the Settlement Agreement and this Act.

14 (3) REMOVAL.—

15 (A) IN GENERAL.—Except as provided in
 16 subparagraph (B), if a judicial action is com-
 17 menced during a dispute over any intergovern-
 18 mental agreement entered into under this sec-
 19 tion, and the United States is allowed to inter-
 20 vene in such action, the United States shall not
 21 remove such action to the Federal courts.

22 (B) EXCEPTION.—The United States may
 23 seek removal if—

1 (i) the action concerns the Secretary's
 2 decision regarding the issuance of rights-
 3 of-way under section 8(c);

4 (ii) the action concerns the authority
 5 of a Federal agency to administer pro-
 6 grams or the issuance of a permit under—

7 (I) the Federal Water Pollution
 8 Control Act (33 U.S.C. 1251 et seq.);

9 (II) the Safe Drinking Water Act
 10 (42 U.S.C. 300f et seq.);

11 (III) the Clean Air Act (42
 12 U.S.C. 7401 et seq.); or

13 (IV) any other Federal law spe-
 14 cifically addressed in intergovern-
 15 mental agreements; or

16 (iii) the intergovernmental agreement
 17 is inconsistent with a Federal law for the
 18 protection of civil rights, public health, or
 19 welfare.

20 (m) RULE OF CONSTRUCTION.—Nothing in this Act
 21 shall be construed to affect the application of the Act of
 22 May 25, 1918 (25 U.S.C. 211) within the State of Ari-
 23 zona.

24 (n) DISCLAIMER.—Nothing in this section repeals,
 25 modifies, amends, changes, or otherwise affects the Sec-

1 retary’s obligations to the Zuni Tribe pursuant to the Act
 2 entitled “An Act to convey certain lands to the Zuni In-
 3 dian Tribe for religious purposes” approved August 28,
 4 1984 (Public Law 98–408; 98 Stat. 1533) (and as amend-
 5 ed by the Zuni Land Conservation Act of 1990 (Public
 6 Law 101–486; 104 Stat. 1174)).

7 **SEC. 6. DEVELOPMENT FUND.**

8 (a) ESTABLISHMENT OF THE FUND.—

9 (1) IN GENERAL.—There is established in the
 10 Treasury of the United States a fund to be known
 11 as the “Zuni Indian Tribe Water Rights Develop-
 12 ment Fund”, to be managed and invested by the
 13 Secretary, consisting of—

14 (A) the amounts authorized to be appro-
 15 priated in section 4(b); and

16 (B) the appropriation to be contributed by
 17 the State of Arizona pursuant to paragraph 7.6
 18 of the Settlement Agreement.

19 (2) ADDITIONAL DEPOSITS.—The Secretary
 20 shall deposit in the Fund any other monies paid to
 21 the Secretary on behalf of the Zuni Tribe pursuant
 22 to the Settlement Agreement.

23 (b) MANAGEMENT OF THE FUND.—The Secretary
 24 shall manage the Fund, make investments from the Fund,
 25 and make monies available from the Fund for distribution

1 to the Zuni Tribe consistent with the American Indian
 2 Trust Fund Management Reform Act of 1994 (25 U.S.C.
 3 4001 et seq.) (referred to in this section as the “Trust
 4 Fund Reform Act”), this Act, and the Settlement Agree-
 5 ment.

6 (c) INVESTMENT OF THE FUND.—The Secretary
 7 shall invest amounts in the Fund in accordance with—

8 (1) the Act of April 1, 1880 (21 Stat. 70, ch.
 9 41, 25 U.S.C. 161);

10 (2) the first section of the Act of June 24,
 11 1938 (52 Stat. 1037, ch. 648, 25 U.S.C. 162a); and

12 (3) subsection (b).

13 (d) AVAILABILITY OF AMOUNTS FROM THE FUND.—
 14 The funds authorized to be appropriated pursuant to sec-
 15 tion 3104(b)(2) and funds contributed by the State of Ari-
 16 zona pursuant to paragraph 7.6 of the Settlement Agree-
 17 ment shall be available for expenditure or withdrawal only
 18 after the requirements of section 9(a) have been met.

19 (e) EXPENDITURES AND WITHDRAWAL.—

20 (1) TRIBAL MANAGEMENT PLAN.—

21 (A) IN GENERAL.—The Zuni Tribe may
 22 withdraw all or part of the Fund on approval
 23 by the Secretary of a tribal management plan
 24 as described in the Trust Fund Reform Act.

1 (B) REQUIREMENTS.—In addition to the
 2 requirements under the Trust Fund Reform
 3 Act, the tribal management plan shall require
 4 that the Zuni Tribe spend any funds in accord-
 5 ance with the purposes described in section
 6 4(b).

7 (2) ENFORCEMENT.—The Secretary may take
 8 judicial or administrative action to enforce the provi-
 9 sions of any tribal management plan to ensure that
 10 any monies withdrawn from the Fund under the
 11 plan are used in accordance with this Act.

12 (3) LIABILITY.—If the Zuni Tribe exercises the
 13 right to withdraw monies from the Fund, neither the
 14 Secretary nor the Secretary of the Treasury shall re-
 15 tain any liability for the expenditure or investment
 16 of the monies withdrawn.

17 (4) EXPENDITURE PLAN.—

18 (A) IN GENERAL.—The Zuni Tribe shall
 19 submit to the Secretary for approval an expend-
 20 iture plan for any portion of the funds made
 21 available under this Act that the Zuni Tribe
 22 does not withdraw under this subsection.

23 (B) DESCRIPTION.—The expenditure plan
 24 shall describe the manner in which, and the

1 purposes for which, funds of the Zuni Tribe re-
 2 maining in the Fund will be used.

3 (C) APPROVAL.—On receipt of an expendi-
 4 ture plan under subparagraph (A), the Sec-
 5 retary shall approve the plan if the Secretary
 6 determines that the plan is reasonable and con-
 7 sistent with this Act.

8 (5) ANNUAL REPORT.—The Zuni Tribe shall
 9 submit to the Secretary an annual report that de-
 10 scribes all expenditures from the Fund during the
 11 year covered by the report.

12 (f) FUNDS FOR ACQUISITION OF WATER RIGHTS.—

13 (1) WATER RIGHTS ACQUISITIONS.—Notwith-
 14 standing subsection (e), the funds authorized to be
 15 appropriated pursuant to section 4(b)(1)—

16 (A) shall be available upon appropriation
 17 for use in accordance with section 4(b)(1); and

18 (B) shall be distributed by the Secretary to
 19 the Zuni Tribe on receipt by the Secretary from
 20 the Zuni Tribe of a written notice and a tribal
 21 council resolution that describe the purposes for
 22 which the funds will be used.

23 (2) RIGHT TO SET OFF.—In the event the re-
 24 quirements of section 9(a) have not been met and
 25 the Settlement Agreement has become null and void

1 under section 9(b), the United States shall be enti-
 2 tled to set off any funds expended or withdrawn
 3 from the amount appropriated pursuant to section
 4 4(b)(1), together with any interest accrued, against
 5 any claims asserted by the Zuni Tribe against the
 6 United States relating to water rights at the Zuni
 7 Heaven Reservation.

8 (3) WATER RIGHTS.—Any water rights ac-
 9 quired with funds described in paragraph (1) shall
 10 be credited against any water rights secured by the
 11 Zuni Tribe, or the United States on behalf of the
 12 Zuni Tribe, for the Zuni Heaven Reservation in the
 13 Little Colorado River General Stream Adjudication
 14 or in any future settlement of claims for those water
 15 rights.

16 (g) NO PER CAPITA DISTRIBUTIONS.—No part of the
 17 Fund shall be distributed on a per capita basis to members
 18 of the Zuni Tribe.

19 **SEC. 7. CLAIMS EXTINGUISHMENT; WAIVERS AND RE-**
 20 **LEASES.**

21 (a) FULL SATISFACTION OF MEMBERS' CLAIMS.—

22 (1) IN GENERAL.—The benefits realized by the
 23 Tribe and its members under this Act, including re-
 24 tention of any claims and rights, shall constitute full

1 and complete satisfaction of all members' claims
2 for—

3 (A) water rights under Federal, State, and
4 other laws (including claims for water rights in
5 groundwater, surface water, and effluent) for
6 Zuni Lands from time immemorial through the
7 effective date described in section 9(a) and any
8 time thereafter; and

9 (B) injuries to water rights under Federal,
10 State, and other laws (including claims for
11 water rights in groundwater, surface water, and
12 effluent, claims for damages for deprivation of
13 water rights, and claims for changes to under-
14 ground water table levels) for Zuni Lands from
15 time immemorial through the effective date de-
16 scribed in section 9(a).

17 (2) NO RECOGNITION OR ESTABLISHMENT OF
18 INDIVIDUAL WATER RIGHT.—Nothing in this Act
19 recognizes or establishes any right of a member of
20 the Tribe to water on the Reservation.

21 (b) TRIBE AND UNITED STATES AUTHORIZATION
22 AND WATER QUANTITY WAIVERS.—The Tribe, on behalf
23 of itself and its members and the Secretary on behalf of
24 the United States in its capacity as trustee for the Zuni
25 Tribe and its members, are authorized, as part of the per-

1 formance of their obligations under the Settlement Agree-
 2 ment, to execute a waiver and release, subject to para-
 3 graph 11.4 of the Settlement Agreement, for claims
 4 against the State of Arizona, or any agency or political
 5 subdivision thereof, or any other person, entity, corpora-
 6 tion, or municipal corporation, under Federal, State, or
 7 other law for any and all—

8 (1) past, present, and future claims to water
 9 rights (including water rights in groundwater, sur-
 10 face water, and effluent) for Zuni Lands from time
 11 immemorial through the effective date described in
 12 section 9(a) and any time thereafter, except for
 13 claims within the Zuni Protection Area as provided
 14 in article 5 of the Settlement Agreement;

15 (2) past and present claims for injuries to
 16 water rights (including water rights in groundwater,
 17 surface water, and effluent and including claims for
 18 damages for deprivation of water rights and any
 19 claims for changes to underground water table lev-
 20 els) for Zuni Lands from time immemorial through
 21 the effective date described in section 9(a); and

22 (3) past, present, and future claims for water
 23 rights and injuries to water rights (including water
 24 rights in groundwater, surface water, and effluent
 25 and including any claims for damages for depriva-

1 tion of water rights and any claims for changes to
 2 underground water table levels) from time immemo-
 3 rial through the effective date described in section
 4 9(a), and any time thereafter, for lands outside of
 5 Zuni Lands but located within the Little Colorado
 6 River basin in Arizona, based upon aboriginal occu-
 7 pancy of lands by the Zuni Tribe or its predecessors.

8 (c) TRIBAL WAIVERS AGAINST THE UNITED
 9 STATES.—The Tribe is authorized, as part of the perform-
 10 ance of its obligations under the Settlement Agreement,
 11 to execute a waiver and release, subject to paragraphs
 12 11.4 and 11.6 of the Settlement Agreement, for claims
 13 against the United States (acting in its capacity as trustee
 14 for the Zuni Tribe or its members, or otherwise acting
 15 on behalf of the Zuni Tribe or its members), including
 16 any agencies, officials, or employees thereof, for any and
 17 all—

18 (1) past, present, and future claims to water
 19 rights (including water rights in groundwater, sur-
 20 face water, and effluent) for Zuni Lands, from time
 21 immemorial through the effective date described in
 22 section 9(a) and any time thereafter;

23 (2) past and present claims for injuries to
 24 water rights (including water rights in groundwater,
 25 surface water, and effluent and any claims for dam-

ages for deprivation of water rights) for Zuni Lands from time immemorial through the effective date described in section 9(a);

(3) past, present, and future claims for water rights and injuries to water rights (including water rights in groundwater, surface water, and effluent and any claims for damages for deprivation of water rights) from time immemorial through the effective date described in section 9(a), and any time thereafter, for lands outside of Zuni Lands but located within the Little Colorado River basin in Arizona, based upon aboriginal occupancy of lands by the Zuni Tribe or its predecessors;

(4) past and present claims for failure to protect, acquire, or develop water rights of, or failure to protect water quality for, the Zuni Tribe within the Little Colorado River basin in Arizona from time immemorial through the effective date described in section 9(a); and

(5) claims for breach of the trust responsibility of the United States to the Zuni Tribe arising out of the negotiation of the Settlement Agreement or this Act.

(d) TRIBAL WAIVER OF WATER QUALITY CLAIMS

AND INTERFERENCE WITH TRUST CLAIMS.—

1 (1) CLAIMS AGAINST THE STATE AND OTH-
2 ERS.—

3 (A) INTERFERENCE WITH TRUST RESPON-
4 SIBILITY.—The Tribe, on behalf of itself and its
5 members, is authorized, as part of the perform-
6 ance of its obligations under the Settlement
7 Agreement, to waive and release all claims
8 against the State of Arizona, or any agency or
9 political subdivision thereof, or any other per-
10 son, entity, corporation, or municipal corpora-
11 tion under Federal, State, or other law, for
12 claims of interference with the trust responsi-
13 bility of the United States to the Zuni Tribe
14 arising out of the negotiation of the Settlement
15 Agreement or this Act.

16 (B) INJURY OR THREAT OF INJURY TO
17 WATER QUALITY.—The Tribe, on behalf of itself
18 and its members, is authorized, as part of the
19 performance of its obligations under the Settle-
20 ment Agreement, to waive and release, subject
21 to paragraphs 11.4, 11.6, and 11.7 of the Set-
22 tlement Agreement, all claims against the State
23 of Arizona, or any agency or political subdivi-
24 sion thereof, or any other person, entity, cor-

poration, or municipal corporation under Federal, State, or other law, for—

(i) any and all past and present claims, including natural resource damage claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.), or any other applicable statute, for injury to water quality accruing from time immemorial through the effective date described in section 9(a), for lands within the Little Colorado River basin in the State of Arizona; and

(ii) any and all future claims, including natural resource damage claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.), or any other applicable statute, for injury or threat of injury to water quality, accruing after the effective date described in section 9(a), for any lands within the Eastern LCR basin caused by—

1 (I) the lawful diversion or use of
2 surface water;

3 (II) the lawful withdrawal or use
4 of underground water, except within
5 the Zuni Protection Area, as provided
6 in article 5 of the Settlement Agree-
7 ment;

8 (III) the Parties' performance of
9 any obligations under the Settlement
10 Agreement;

11 (IV) the discharge of oil associ-
12 ated with routine physical or mechan-
13 ical maintenance of wells or diversion
14 structures not inconsistent with appli-
15 cable law;

16 (V) the discharge of oil associ-
17 ated with routine start-up and oper-
18 ation of well pumps not inconsistent
19 with applicable law; or

20 (VI) any combination of the
21 causes described in subclauses (I)
22 through (V).

23 (2) CLAIMS OF THE UNITED STATES.—The
24 Tribe, on behalf of itself and its members, is author-

1 ized to waive its right to request that the United
2 States bring—

3 (A) any claims for injuries to water quality
4 under the natural resource damage provisions
5 of the Comprehensive Environmental Response,
6 Compensation, and Liability Act of 1980 (42
7 U.S.C. 9601 et seq.), the Oil Pollution Act of
8 1990 (33 U.S.C. 2701 et seq.) or any other ap-
9 plicable statute, for lands within the Little Col-
10 orado River Basin in the State of Arizona, ac-
11 cruing from time immemorial through the effec-
12 tive date described in section 9(a); and

13 (B) any future claims for injuries or threat
14 of injury to water quality under the natural re-
15 source damage provisions of the Comprehensive
16 Environmental Response, Compensation, and
17 Liability Act of 1980 (42 U.S.C. 9601 et seq.),
18 the Oil Pollution Act of 1990 (33 U.S.C. 2701
19 et seq.), or any other applicable statute, accru-
20 ing after the effective date described in section
21 9(a), for any lands within the Eastern LCR
22 basin, caused by—

23 (i) the lawful diversion or use of sur-
24 face water;

1 (ii) the lawful withdrawal or use of
 2 underground water, except within the Zuni
 3 Protection Area, as provided in article 5 of
 4 the Settlement Agreement;

5 (iii) the Parties' performance of any
 6 obligations under the Settlement Agree-
 7 ment;

8 (iv) the discharge of oil associated
 9 with routine physical or mechanical main-
 10 tenance of wells or diversion structures not
 11 inconsistent with applicable law;

12 (v) the discharge of oil associated with
 13 routine start-up and operation of well
 14 pumps not inconsistent with applicable law;
 15 or

16 (vi) any combination of the causes de-
 17 scribed in clauses (i) through (v).

18 (3) LIMITATIONS.—Notwithstanding the au-
 19 thorization for the Tribe's waiver of future water
 20 quality claims in paragraph (1)(B)(ii) and the waiv-
 21 er in paragraph (2)(B), the Tribe, on behalf of itself
 22 and its members, retains any statutory claims for in-
 23 jury or threat of injury to water quality under the
 24 Comprehensive Environmental Response, Compensa-
 25 tion, and Liability Act of 1980 (42 U.S.C. 9601 et

1 seq.) and the Oil Pollution Act of 1990 (33 U.S.C.
 2 2701 et seq.), as described in subparagraph
 3 11.4(D)(3) and (4) of the Settlement Agreement,
 4 that accrue at least 30 years after the effective date
 5 described in section 9(a).

6 (e) WAIVER OF UNITED STATES WATER QUALITY
 7 CLAIMS RELATED TO SETTLEMENT LAND AND WATER.—

8 (1) PAST AND PRESENT CLAIMS.—As part of
 9 the performance of its obligations under the Settle-
 10 ment Agreement, the United States waives and re-
 11 leases, subject to the retentions in paragraphs 11.4,
 12 11.6 and 11.7 of the Settlement Agreement, all
 13 claims against the State of Arizona, or any agency
 14 or political subdivision thereof, or any other person,
 15 entity, corporation, or municipal corporation for—

16 (A) all past and present common law
 17 claims accruing from time immemorial through
 18 the effective date described in section 9(a) aris-
 19 ing from or relating to water quality in which
 20 the injury asserted is to the Tribe’s interest in
 21 water, trust land, and natural resources in the
 22 Little Colorado River basin in the State of Ari-
 23 zona; and

24 (B) all past and present natural resource
 25 damage claims accruing through the effective

1 date described in section 9(a) arising from or
 2 relating to water quality in which the claim is
 3 based on injury to natural resources or threat
 4 to natural resources in the Little Colorado
 5 River basin in Arizona, only for those cases in
 6 which the United States, through the Secretary
 7 or other designated Federal official, would act
 8 on behalf of the Tribe as a natural resource
 9 trustee pursuant to the National Contingency
 10 Plan, as set forth, as of the date of enactment
 11 of this Act, in section 300.600(b)(2) of title 40,
 12 Code of Federal Regulations.

13 (2) FUTURE CLAIMS.—As part of the perform-
 14 ance of its obligations under the Settlement Agree-
 15 ment, the United States waives and releases, subject
 16 to the retentions in paragraphs 11.4, 11.6 and 11.7
 17 of the Settlement Agreement, the State of Arizona,
 18 or any agency or political subdivision thereof, or any
 19 other person, entity, corporation, or municipal cor-
 20 poration for—

21 (A) all future common law claims arising
 22 from or relating to water quality in which the
 23 injury or threat of injury asserted is to the
 24 Tribe's interest in water, trust land, and nat-
 25 ural resources in the Eastern LCR basin in Ari-

1 zona accruing after the effective date described
 2 in section 9(a) caused by—

3 (i) the lawful diversion or use of sur-
 4 face water;

5 (ii) the lawful withdrawal or use of
 6 underground water, except within the Zuni
 7 Protection Area, as provided in article 5 of
 8 the Settlement Agreement;

9 (iii) the Parties' performance of any
 10 obligations under the Settlement Agree-
 11 ment;

12 (iv) the discharge of oil associated
 13 with routine physical or mechanical main-
 14 tenance of wells or diversion structures not
 15 inconsistent with applicable law;

16 (v) the discharge of oil associated with
 17 routine start-up and operation of well
 18 pumps not inconsistent with applicable law;
 19 or

20 (vi) any combination of the causes de-
 21 scribed in clauses (i) through (v); and

22 (B) all future natural resource damage
 23 claims accruing after the effective date de-
 24 scribed in section 9(a) arising from or relating
 25 to water quality in which the claim is based on

1 injury to natural resources or threat to natural
2 resources in the Eastern LCR basin in Arizona,
3 only for those cases in which the United States,
4 through the Secretary or other designated Fed-
5 eral official, would act on behalf of the Tribe as
6 a natural resource trustee pursuant to the Na-
7 tional Contingency Plan, as set forth, as of the
8 date of enactment of this Act, in section
9 300.600(b)(2) of title 40, Code of Federal Reg-
10 ulations, caused by—

11 (i) the lawful diversion or use of sur-
12 face water;

13 (ii) the lawful withdrawal or use of
14 underground water, except within the Zuni
15 Protection Area as provided in article 5 of
16 the Settlement Agreement;

17 (iii) the Parties' performance of their
18 obligations under this Settlement Agree-
19 ment;

20 (iv) the discharge of oil associated
21 with routine physical or mechanical main-
22 tenance of wells or diversion structures not
23 inconsistent with applicable law;

24 (v) the discharge of oil associated with
25 routine start-up and operation of well

1 pumps not inconsistent with applicable law;

2 or

3 (vi) any combination of the causes de-

4 scribed in clauses (i) through (v).

5 (f) EFFECT.—Subject to subsections (b) and (e),

6 nothing in this Act or the Settlement Agreement affects

7 any right of the United States, or the State of Arizona,

8 to take any actions, including enforcement actions, under

9 any laws (including regulations) relating to human health,

10 safety and the environment.

11 **SEC. 8. MISCELLANEOUS PROVISIONS.**

12 (a) WAIVER OF SOVEREIGN IMMUNITY.—If any party

13 to the Settlement Agreement or a Pumping Protection

14 Agreement files a lawsuit only relating directly to the in-

15 terpretation or enforcement of this Act, the Settlement

16 Agreement, an agreement described in paragraph (1), (2),

17 or (3) of section 4(c), or a Pumping Protection Agree-

18 ment, naming the United States or the Tribe as a party,

19 or if any other landowner or water user in the Little Colo-

20 rado River basin in Arizona files a lawsuit only relating

21 directly to the interpretation or enforcement of Article 11,

22 the rights of de minimis users in subparagraph 4.2.D or

23 the rights of underground water users under Article 5 of

24 the Settlement Agreement, naming the United States or

25 the Tribe as a party—

1 (1) the United States, the Tribe, or both may
 2 be added as a party to any such litigation, and any
 3 claim by the United States or the Tribe to sovereign
 4 immunity from such suit is hereby waived, other
 5 than with respect to claims for monetary awards ex-
 6 cept as specifically provided for in the Settlement
 7 Agreement; and

8 (2) the Tribe may waive its sovereign immunity
 9 from suit in the Superior Court of Apache County,
 10 Arizona for the limited purposes of enforcing the
 11 terms of the Intergovernmental Agreement, and any
 12 intergovernmental agreement required to be entered
 13 into by the Tribe under the terms of the Intergov-
 14 ernmental Agreement, other than with respect to
 15 claims for monetary awards except as specifically
 16 provided in the Intergovernmental Agreement.

17 (b) TRIBAL USE OF WATER.—

18 (1) IN GENERAL.—With respect to water rights
 19 made available under the Settlement Agreement and
 20 used on the Zuni Heaven Reservation—

21 (A) such water rights shall be held in trust
 22 by the United States in perpetuity, and shall
 23 not be subject to forfeiture or abandonment;

24 (B) State law shall not apply to water uses
 25 on the Reservation;

1 (C) the State of Arizona may not regulate
 2 or tax such water rights or uses (except that
 3 the court with jurisdiction over the decree en-
 4 tered pursuant to the Settlement Agreement or
 5 the Norviel Decree Court may assess adminis-
 6 trative fees for delivery of this water);

7 (D) subject to paragraph 7.7 of the Settle-
 8 ment Agreement, the Zuni Tribe shall use
 9 water made available to the Zuni Tribe under
 10 the Settlement Agreement on the Zuni Heaven
 11 Reservation for any use it deems advisable;

12 (E) water use by the Zuni Tribe or the
 13 United States on behalf of the Zuni Tribe for
 14 wildlife or instream flow use, or for irrigation to
 15 establish or maintain wetland on the Reserva-
 16 tion, shall be considered to be consistent with
 17 the purposes of the Reservation; and

18 (F)(i) not later than 3 years after the
 19 deadline described in section 9(b), the Zuni
 20 Tribe shall adopt a water code to be approved
 21 by the Secretary for regulation of water use on
 22 the lands identified in subsections (a) and (b)
 23 of section 5 that is reasonably equivalent to
 24 State water law (including statutes relating to
 25 dam safety and groundwater management); and

(ii) until such date as the Zuni Tribe adopts a water code described in clause (i), the Secretary, in consultation with the State of Arizona, shall administer water use and water regulation on lands described in that clause in a manner that is reasonably equivalent to State law (including statutes relating to dam safety and groundwater management).

(2) LIMITATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Zuni Tribe or the United States shall not sell, lease, transfer, or transport water made available for use on the Zuni Heaven Reservation to any other place.

(B) EXCEPTION.—Water made available to the Zuni Tribe or the United States for use on the Zuni Heaven Reservation may be severed and transferred from the Reservation to other Zuni Lands if the severance and transfer is accomplished in accordance with State law (and once transferred to any lands held in fee, such water shall be subject to State law).

(c) RIGHTS-OF-WAY.—

(1) NEW AND FUTURE TRUST LAND.—The land taken into trust under subsections (a) and (b) of

1 section 5 shall be subject to existing easements and
 2 rights-of-way.

3 (2) ADDITIONAL RIGHTS-OF-WAY.—

4 (A) IN GENERAL.—Notwithstanding any
 5 other provision of law, the Secretary, in con-
 6 sultation with the Tribe, shall grant additional
 7 rights-of-way or expansions of existing rights-
 8 of-way for roads, utilities, and other accom-
 9 modations to adjoining landowners if—

10 (i) the proposed right-of-way is nec-
 11 essary to the needs of the applicant;

12 (ii) the proposed right-of-way will not
 13 cause significant and substantial harm to
 14 the Tribe’s wetland restoration project or
 15 religious practices; and

16 (iii) the proposed right-of-way acquisi-
 17 tion will comply with the procedures in
 18 part 169 of title 25, Code of Federal Regu-
 19 lations, not inconsistent with this sub-
 20 section and other generally applicable Fed-
 21 eral laws unrelated to the acquisition of in-
 22 terests across trust lands.

23 (B) ALTERNATIVES.—If the criteria de-
 24 scribed in clauses (i) through (iii) of subpara-
 25 graph (A) are not met, the Secretary may pro-

1 pose an alternative right-of-way, or other ac-
2 commodation that complies with the criteria.

3 (d) CERTAIN CLAIMS PROHIBITED.—The United
4 States shall make no claims for reimbursement of costs
5 arising out of the implementation of this Act or the Settle-
6 ment Agreement against any Indian-owned land within the
7 Tribe’s Reservation, and no assessment shall be made in
8 regard to such costs against such lands.

9 (e) VESTED RIGHTS.—Except as described in para-
10 graph 5.3 of the Settlement Agreement (recognizing the
11 Zuni Tribe’s use of 1,500 acre-feet per annum of ground-
12 water) this Act and the Settlement Agreement do not cre-
13 ate any vested right to groundwater under Federal or
14 State law, or any priority to the use of groundwater that
15 would be superior to any other right or use of groundwater
16 under Federal or State law, whether through this Act, the
17 Settlement Agreement, or by incorporation of any ab-
18 stract, agreement, or stipulation prepared under the Set-
19 tlement Agreement. Notwithstanding the preceding sen-
20 tence, the rights of parties to the agreements referred to
21 in paragraph (1), (2), or (3) of section 4(c) and paragraph
22 5.8 of the Settlement Agreement, as among themselves,
23 shall be as stated in those agreements.

24 (f) OTHER CLAIMS.—Nothing in the Settlement
25 Agreement or this Act quantifies or otherwise affects the

1 water rights, claims, or entitlements to water of any In-
 2 dian tribe, band, or community, other than the Zuni In-
 3 dian Tribe.

4 (g) NO MAJOR FEDERAL ACTION.—

5 (1) IN GENERAL.—Execution of the Settlement
 6 Agreement by the Secretary as provided for in sec-
 7 tion 4(a) shall not constitute major Federal action
 8 under the National Environmental Policy Act (42
 9 U.S.C. 4321 et seq.).

10 (2) SETTLEMENT AGREEMENT.—In imple-
 11 menting the Settlement Agreement, the Secretary
 12 shall comply with all aspects of—

13 (A) the National Environmental Policy Act
 14 of 1969 (42 U.S.C. 4321 et seq.);

15 (B) the Endangered Species Act of 1973
 16 (16 U.S.C. 1531 et seq.); and

17 (C) all other applicable environmental laws
 18 (including regulations).

19 **SEC. 9. EFFECTIVE DATE FOR WAIVER AND RELEASE AU-**
 20 **THORIZATIONS.**

21 (a) IN GENERAL.—The waiver and release authoriza-
 22 tions contained in subsections (b) and (c) of section 7 shall
 23 become effective as of the date the Secretary causes to
 24 be published in the Federal Register a statement of all
 25 the following findings:

1 (1) This Act has been enacted in a form ap-
2 proved by the parties in paragraph 3.1.A of the Set-
3 tlement Agreement.

4 (2) The funds authorized by section 4(b) have
5 been appropriated and deposited into the Fund.

6 (3) The State of Arizona has appropriated and
7 deposited into the Fund the amount required by
8 paragraph 7.6 of the Settlement Agreement.

9 (4) The Zuni Indian Tribe has either purchased
10 or acquired the right to purchase at least 2,350
11 acre-feet per annum of surface water rights, or
12 waived this condition as provided in paragraph 3.2
13 of the Settlement Agreement.

14 (5) Pursuant to subparagraph 3.1.D of the Set-
15 tlement Agreement, the severance and transfer of
16 surface water rights that the Tribe owns or has the
17 right to purchase have been conditionally approved,
18 or the Tribe has waived this condition as provided
19 in paragraph 3.2 of the Settlement Agreement.

20 (6) Pursuant to subparagraph 3.1.E of the Set-
21 tlement Agreement, the Tribe and Lyman Water
22 Company have executed an agreement relating to
23 the process of the severance and transfer of surface
24 water rights acquired by the Zuni Tribe or the
25 United States, the pass-through, use, or storage of

1 the Tribe's surface water rights in Lyman Lake, and
2 the operation of Lyman Dam.

3 (7) Pursuant to subparagraph 3.1.F of the Set-
4 tlement Agreement, all the parties to the Settlement
5 Agreement have agreed and stipulated to certain Ar-
6 izona Game and Fish abstracts of water uses.

7 (8) Pursuant to subparagraph 3.1.G of the Set-
8 tlement Agreement, all parties to the Settlement
9 Agreement have agreed to the location of an obser-
10 vation well and that well has been installed.

11 (9) Pursuant to subparagraph 3.1.H of the Set-
12 tlement Agreement, the Zuni Tribe, Apache County,
13 Arizona and the State of Arizona have executed an
14 Intergovernmental Agreement that satisfies all of
15 the conditions in paragraph 6.2 of the Settlement
16 Agreement.

17 (10) The Zuni Tribe has acquired title to the
18 section of land adjacent to the Zuni Heaven Res-
19 ervation described as Section 34, Township 14
20 North, Range 26 East, Gila and Salt River Base
21 and Meridian.

22 (11) The Settlement Agreement has been modi-
23 fied if and to the extent it is in conflict with this Act
24 and such modification has been agreed to by all the
25 parties to the Settlement Agreement.

1 (12) A court of competent jurisdiction has ap-
2 proved the Settlement Agreement by a final judg-
3 ment and decree.

4 (b) DEADLINE FOR EFFECTIVE DATE.—If the publi-
5 cation in the Federal Register required under subsection
6 (a) has not occurred by December 31, 2006, sections 4
7 and 5, and any agreements entered into pursuant to sec-
8 tions 4 and 5 (including the Settlement Agreement and
9 the Intergovernmental Agreement) shall not thereafter be
10 effective and shall be null and void. Any funds and the
11 interest accrued thereon appropriated pursuant to section
12 4(b)(2) shall revert to the Treasury, and any funds and
13 the interest accrued thereon appropriated pursuant to
14 paragraph 7.6 of the Settlement Agreement shall revert
15 to the State of Arizona.

Passed the Senate March 13, 2003.

Attest:

Secretary.

108TH CONGRESS
1ST SESSION

S. 222

AN ACT

To approve the settlement of the water rights
claims of the Zuni Indian Tribe in Apache Coun-
ty, Arizona, and for other purposes.